

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

vs.

NO. 13-MJ-137 LFG

AJAY JARIWALA,

Defendant.

FINDINGS OF FACT

THIS MATTER came before the Court on the Plaintiff United States of America's ("United States") opposed motion for detention [Doc. 5]; Defendant Ajay Jariwala's ["Jariwala"] "Motion to Review Conditions of Release" [Doc. 8]; and the United States' "Memorandum in Opposition to the Defendant's Motion for Release on His Own Recognizance" [Doc. 15].

The Court conducted an extensive evidentiary hearing and heard the parties' proffer of evidence and the cross examination of witnesses. It further took judicial notice of the Probation & Pretrial Services Report and recommendation, which proposed release on terms and conditions. The Court concludes that, consistent with the Bail Reform Act, conditions can be fashioned to minimize any risk of non-appearance or danger to the community.

Jariwala is named as a Defendant on a January 16, 2013 Superseding Indictment issued by the United States District Court for the District of Wyoming. Jariwala is charged in the six-count Superseding Indictment with conspiracy to commit mail and wire fraud, in violation of 18 U.S.C. § 1349 (Count One); conspiracy to commit arson, in violation of 18 U.S.C. § 844(n) (Count Two); conspiracy to use fire in the commission of another felony offense, 18 U.S.C. § 844(m) (Count

Three); aiding and abetting arson, in violation of 18 U.S.C. § 844(i) and § 2(a) (Count Four); use of fire in the commission of another felony, 18 U.S.C. § 844(h) and § 2(a) (Count Five); and wire fraud, in violation of 18 U.S.C. § 1343 (Count Six).

The United States advises that four of the pending charges are considered crimes of violence. Those include Counts Two, Three, Four and Five. [See Doc. 1, at 9-10] (*citing* United States v. Mitchell, 23 F.3d 1, 2, n. 3 (1st Cir. 1994)) (holding that aiding and abetting federal crime of arson, as defined by 18 U.S.C. § 844(i) is a crime of violence).

The United States indicates that the normal considerations under 18 U.S.C. § 3142, which create a rebuttable presumption of detention are not applicable; but, nonetheless, the Court is required to determine if release of Jariwala would result in subjecting the community to the risk of harm or if there is an unreasonable risk of flight.

The Probation & Pretrial Services Office interviewed Jariwala, reviewed his history, residence, family ties, employment, financial resources and health, and notes that he is a long-time resident of the City of Albuquerque. His residence, located in one of his motel properties, was verified by a Lexis Nexus Accurint data base inquiry. Jariwala reported living in the Albuquerque area since 1994, and from 1984 to 1994, he resided in Los Angeles, California. From his birth until 1984, he was a resident of Surat, India. He is now a United States citizen, and his last return to India was in 2009, following his father's death. The purpose of his visit was to spread his father's ashes in his father's homeland.

Probation & Pretrial Services reports that Jariwala is a self-employed hotel owner and owns multiple motels in Albuquerque. His attorney advises that Jariwala was aware of the investigation and charges for nearly two years. Jariwala retained counsel from Denver who has been in active communication with the Office of the United States Attorney in Wyoming. Thus, Jariwala was

aware for nearly two years of the potential for an indictment, or as in this case, a Superseding Indictment. Even though aware of the charges, he has not sought to put himself out of the Court's jurisdiction by fleeing to India or elsewhere.

Jariwala's attorney notes that even with the knowledge that alleged criminal activity was being investigated, and the likelihood of an indictment, Jariwala has made substantial investments in a new development project in Albuquerque. He states that this is not the conduct of an individual who is planning to flee.

In addition, Probation & Pretrial Services conducted a criminal record check of Jariwala through the National Crime Information Center. There is no criminal history of any kind or nature.

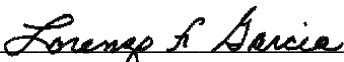
Probation & Pretrial Services recommends that Jariwala be released on terms and conditions and directed him to self-surrender in the District of Wyoming. Probation & Pretrial Services proposes pretrial supervision; the surrender of his passport and prohibition from obtaining a new passport; access to financial information, including tax returns and credit checks; disclosure of requested financial information to Probation & Pretrial Services; prohibitions concerning opening up new lines of credit without prior authorization from Probation & Pretrial Services; travel restrictions within the State of New Mexico, except for direct travel to the District of Wyoming; and prohibition of possessing firearms, destructive devices or dangerous weapons.¹

Jariwala has many family members in Albuquerque, including his spouse, his brother and two children, one of whom is a medical student. Given the extensive family connections in Albuquerque and his extensive property holdings here, the Court finds that it is simply not likely that he will flee.

¹Jariwala already surrendered his passport to Probation & Pretrial Services.

The Court recognizes that the arson related charges are considered crimes of violence. However, Jariwala has no criminal history, and nothing, save for the current Superseding Indictment, would cause the Court to believe that he would constitute a danger to the community. The crimes do not involve drugs or weapons, but relate to insurance fraud and arson.

The Court concludes that reasonable conditions can be fashioned to ensure that Jariwala will not flee and will not pose a danger to the community pending trial. For these reasons, the Court accepts Probation & Pretrial Services' recommendation and orders Jariwala released with instructions that he return to the District of Wyoming to respond to the charges pending against him.



Lorenzo F. Garcia
United States Magistrate Judge